



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 4 1998

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Saskia Mooney
Environmental Analyst
Howrey & Simon
1299 Pennsylvania Ave., N.W.
Washington, DC 20004-2402

Dear Ms. Mooney:

This is in response to your letter of January 27, 1998, to Mary Goslee, regarding the status of Polychlorinated Biphenyl (PCB) waste shipments from Mexico to France which transit through United States territory.

For purposes of section 6(e) of the Toxic Substances Control Act (TSCA), the transboundary shipments of PCB waste in transit, including any residuals resulting from cleanup of spills during transit, through the United States are not considered exports or imports. Such shipments are therefore not prohibited under TSCA section 6(e). The example you give of a shipment of PCB waste from Mexico which stops at a U.S. port while in transit to France, would not be considered an import or export under TSCA section 6(e).

The movement of PCB waste from Mexico to the United States is subject to a 1986 bilateral agreement (Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances). If the Government of Mexico is aware that a shipment of PCB waste will be transported through the territory of the United States, then the Environmental Protection Agency (EPA) would expect to be notified by the designated authority of the Government of Mexico in accordance with Article III (para. #7) of that agreement. Written response would be provided by EPA at the request of the designated authority of the Government of Mexico or if EPA were to object to a shipment. As a non-party the United States does not require any notification of such shipments pursuant to the Basel Convention.

If the PCB waste were to contain materials destined for recovery operations, certain decisions of the Organization for Economic Cooperation and Development might apply. I have enclosed a letter which discusses this matter in more detail.



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If you have any more questions regarding this matter, you may contact Peter Gimlin on my staff at (202) 260-3972.

Sincerely,



Tony Baney, Chief
Fibers and Organics Branch

Enclosure (Maling letter 5/12/97)

cc: Bob Heiss, Mary Goslee, OECA
Luis Wolf, Miguel Muñoz, INE

Mailed
3/6/98
JES



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

Glen Maling
Sr. Account Executive
ENSR Operations
1700 Gateway Blvd., S.E.
Canton, OH 44707-3555

MAY 12 1997

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Dear Mr. Maling:

This is in response to your letter of February 17, 1997, which requests guidance from the Environmental Protection Agency (EPA) on the issue of importing polychlorinated biphenyl (PCB) wastes to the United States from other member countries of the Organization for Economic Cooperation and Development (OECD).

On March 30, 1992, the OECD Council adopted Decision C(92)39 on the Control of Transfrontier Movements of Wastes Destined for Recovery Operations. This OECD Decision is a preexisting agreement under Article 11 of the Basel Convention. The OECD multilateral agreement allows the U.S. to import PCB waste from other OECD Members, including those who are Basel Parties, for purposes of recovery. However, the OECD agreement does not cover PCB waste imported for final disposal. Imports of PCB waste from Canada and Mexico for both recovery and final disposal are governed by separate bilateral agreements.

Under the OECD Decision, "Recovery Operation" means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative use as listed in Table 2.B of the Annex to OECD Council Decision C(88)90(Final) of 27 May 1988. Among other activities, this includes:

- R1 Use as a fuel (other than in direct incineration) or other means to generate energy
- R2 Solvent reclamation/regeneration
- R3 Recycling/reclamation of organic substances which are not used as solvents
- R4 Recycling/reclamation of metals and metal compounds
- R9 Used oil re-refining or other reuses of previously used oil

In your letter, you note that ENSR processes PCB-containing dielectric fluid and other used oils to levels below 2 ppm PCBs. The oil is subsequently either reused as a dielectric fluid, reused for a variety of other industrial uses, or reused as fuel oil. Such activities fall within the scope of the definition of recovery operation and are covered by the OECD Decision. Similarly, disposal operations permitted under the Toxic Substances Control Act (TSCA) that recycle or reclaim significant amounts of metals or other reusable materials from PCB waste also fall within the definition of recovery operation. Such facilities may import transformer carcasses and other

recyclables at any PCB concentration for recovery. TSCA-permitted incinerators, whose primary function is final destruction of PCB waste, are excluded from the definition of recovery operation, and imports to these incinerators are not covered by the OECD Decision.

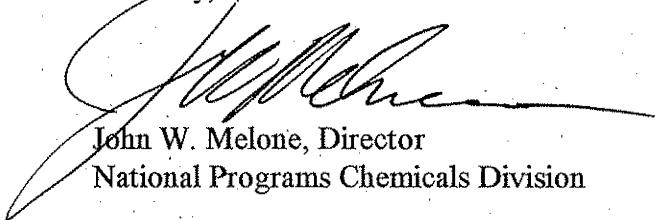
Imports of PCB waste are subject to the requirements of the Section 6(e), including the PCB import regulations at 40 CFR 761, Subpart F.

Importers should be aware that imported PCB waste may also be subject to regulation under RCRA Subtitle C as a hazardous waste, unless it satisfies the RCRA exemption set forth in §261.8. If used oil meets the RCRA definition of a hazardous waste and fails to meet the §261.8 definition (i.e., it is not a PCB-containing dielectric fluid), then it will have to be handled in compliance with all applicable RCRA regulations, including 40 CFR 262, Subpart H, which governs the import and export of hazardous waste subject to the OECD Decision.

Because Subpart H currently only applies to hazardous wastes under the Resource Conservation and Recovery Act (RCRA), PCB waste is generally not subject to these regulations (unless it is also a RCRA hazardous waste). However, as a practical matter, importers of PCB waste from OECD countries for recovery operations may need to comply with certain red-list provisions of the OECD Decision itself. For instance, under the OECD Decision, red-list waste must be accompanied by a specific tracking document, and recovery facilities must return signed copies of the tracking document to the notifier and competent authorities of concerned countries. A legally binding contract or equivalent arrangement must be in place, specifying each party handling shipments of red-listed waste (PCBs), and the responsible party in case alternate management or re-export is necessary. Although no financial guarantees are required under U.S. law, if a foreign exporter's government requires such assurance, the foreign notifier may require the U.S. importer to have financial assurance as a condition of their contract.

I hope this letter answers your questions. Should you have further questions concerning this issue, please contact Peter Gimlin of my staff at (202) 260-3972, or Julie Gourley of the Office of Solid Waste at (703) 308-8751.

Sincerely,



John W. Melone, Director
National Programs Chemicals Division

cc: Julie Gourley, OSW
Julie Simpson, OGC
Kathy Nam, OGC
Robert Heiss, OECA
Tony Martig, Reg.V

HOWREY & SIMON

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January 27, 1998

In Los Angeles
(213) 892-1800

BY FACSIMILE

Mary R. Goslee
OECA Import/Export Specialist
US EPA
401 M Street S.W. (Mail Code 2222A)
Room 5124
Washington, D.C. 20460

Re: In-Transit Shipment of PCBs from Mexico to France

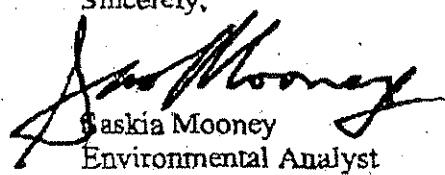
Dear Ms. Goslee:

Per our telephone conversations, please confirm in writing that:

- OK 1) The U.S. Environmental Protection Agency (EPA) does not object to an in-transit stop at a U.S. port in the course of boat shipments of PCBs for disposal from Mexico to France, provided no PCBs are unloaded from the ship at the U.S. port; and
- ?? 2) EPA does not require submission of any form, pursuant to the Basel Convention, that might relate to this shipment. If such a form is received by EPA, it will be accepted and kept on record, but no further action will be taken, unless requested.

Your prompt response would be most appreciated. As always, thank you for all of your help.

Sincerely,


Saskia Mooney
Environmental Analyst

383-7350